



May 11, 2017

Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington DC 20554

Re: Notice of *Ex Parte* Presentation, CG Docket No. 02-278

Dear Ms. Dortch:

This *Ex Parte* Notice relates to a meeting on May 9, 2017 between me, Randall Snyder, a telecommunications expert,¹ Henning Schulzrinne of the FCC's Office of Strategic Planning and Policy Analysis, and the following staff of the Consumer and Government Affairs Bureau: Patrick Webre (Acting Director), Nellie Foosaner, John B. Adams, Kurt Schroeder, Mark Stone, Micah Caldwell, and Kristi Thornton. We discussed the reasons why ringless voicemail (RVM) technology should be considered a call under the Telephone Consumer Protection Act, and regulated accordingly.

More specifically, we provided information on the following issues:

1. Impact on Consumers.

- a. We described how RVM technology works to deliver deliberately targeted, pre-recorded telemarketing and debt collection voice messages *en masse* to the voicemail boxes of cellular subscribers. The technology is based on an abnormal use of voicemail. Instead of a typical voicemail message being left when a cellular subscriber is unavailable to receive a call, a pre-recorded voicemail message is delivered directly to the cellular subscriber's voicemail box.
- b. The leaving of an RVM message in the consumer's voicemail box then triggers an audible notification of the presence of a voicemail message, depending upon the consumer's settings.

¹ See <http://www.wirelessresearchservices.com/>.

- c. The leaving of an RVM message will also cause a notification to appear on the consumer's visual voicemail application, using up data on the consumer's data plan.
- d. The duration of each RVM message is limited only by the maximum time, in minutes, supported by each carrier's voicemail offering, generally around three to five minutes or longer.
- e. As illustrated by Exhibit A, many cell phone plans have limited voicemail capacity in terms of the number of messages that can be left on the systems, and the permissible length of the messages.
- f. Consumers have no control over who can leave an RVM message, how long the messages are, or how often the messages are left on their voicemail. Unlike direct calls, consumers have no way to block unwanted RVM voicemail messages.
- g. To access the RVM message, consumers must call into their voicemail system, using up minutes if they have a limited minute cell phone plan, as approximately one quarter of all cell phone users have currently.² Moreover, when a consumer is roaming, just leaving the RVM message can trigger roaming charges,³ and retrieving the message will also trigger roaming charges.⁴
- h. The potential impact on consumers from RVM is massive. As Stratics Networks illustrates on its website,⁵ the system has the capability to "send out 10,000 RVMs per Minute." (See

² CTIA - The Wireless Association, "Prepaid Connections Make Up 23.4 Percent of Wireless Market," accessed January 29, 2017, <http://www.ctia.org/industry-data/facts-and-infographics-details/factand-infographics/prepaid-connections-make-up-23-4-percent-of-wireless-market>.

³ See e.g. AT&T FAQ on international calls:

How am I charged for receiving voicemail messages while roaming internationally?

When receiving standard voicemail messages:

Standard voicemail messages received when roaming outside of the U.S. are charged at international roaming calling rates, based on the international roaming feature on your account, or if you have not selected a feature, pay-per-use rates will apply.

When receiving Visual Voicemail messages:

Visual Voicemail messages received when roaming outside of the U.S. are charged at international roaming data rates, based on the international roaming feature on your account, or, if you have not selected a feature, pay-per-use rates will apply.

Accessed May 11, 2017, <https://www.att.com/offers/international-plans/faq.html>.

⁴ *Id.*

⁵ <http://straticsnetworks.com/stratics-networks-vs-the-competitors/>.

Exhibit B).

- i. If unregulated, RVMs will likely overwhelm consumers' voicemail systems and consumers will have no way to limit, control or stop these messages. Debt collectors could potentially hijack a consumer's voicemail with collection messages, eliminating access by callers whose messages are wanted and needed by the consumer.

2. How RVM works

- a. In one method, a computerized platform initiates automatic calls to special "backdoor numbers" of the cellular carriers' voicemail systems using an automatic telephone dialing system. A list of cellular numbers is uploaded into the system. As part of each automated call, the subscribers' cellular telephone numbers are used to identify each voicemail box whereby the pre-recorded voice message is left in each voicemail box. Thus, targeted pre-recorded voicemail messages are left *en masse* using an automatic dialing system for each particular consumer using their cellular telephone numbers.
- b. Another method that can be used is by a computerized platform establishing a direct internet-based computer-to-computer data connection to the respective voicemail systems of the cellular carriers. As part of the protocol of this data communication, subscribers' cellular telephone numbers are used to identify each voicemail box whereby the pre-recorded voice message is inserted into each voicemail box *en masse*.
- c. The method by which a computer-to-computer connection is used is essentially the same technology used for sending SMS-based telemarketing text messages to cellular subscribers *en masse* (as illustrated by Exhibit C).

3. Pre-recorded RVM voice messages are calls

- a. As the FCC's 2015 Omnibus Order reiterated,⁶ text messages are considered calls under the TCPA, and the mechanisms used to transmit RVM appears to be identical to text messages.
- b. Moreover, the impact on the consumer is the same or worse as text messages:
 - i. Notifications about the presence of a text message appear on the consumer's cell phone, and are provided audibly (depending upon the consumer's settings), just as notifications of voicemail messages will appear both visually and audibly on cell phones.
 - ii. For both text messages and voicemail, consumers must press a button on their phones to access the messages.
 - iii. Text messages from unwanted callers can be blocked, while RVM voice messages cannot be blocked.

⁶ In the Matter of Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 02-278, Report and Order, 30 FCC Rcd. 7961, 8006-8011 ¶¶ 108-113 (2015).

- iv. Text messages are limited by their underlying technology in length, while RVM voice messages are only limited by the maximum time allowed by each carrier.
- c. The FCC's determination that text messages are calls, covered by the TCPA, was upheld by the 9th Circuit in the case of *Satterfield v. Simon & Schuster, Inc.*⁷ The court looked to the definition of a call and found the dictionary definition of a "call" to be useful:

The precise language at issue here is what did Congress intend when it said "to make any call" under the TCPA. Utilizing the aforementioned canons of statutory construction, we look to the ordinary, contemporary, and common meaning of the verb "to call." Webster's defines "call" in this context as "to communicate with or try to get into communication with a person by a telephone." ... This definition suggests that by enacting the TCPA, Congress intended to regulate the use of an ATDS to communicate or try to get into communication with a person by a telephone. However, this law was enacted in 1991 when text messaging was not available.⁸

The Court also found that Congressional intent dictated the coverage of text messages as calls under the TCPA.

We also consider the purposes of the TCPA. The TCPA was enacted to "protect the privacy interests of residential telephone subscribers by placing restrictions on unsolicited, automated telephone calls to the home and to facilitate interstate commerce by restricting certain uses of facsimile machines and automatic dialers." ... The TCPA was enacted in response to an increasing number of consumer complaints arising from the increased number of telemarketing calls. ... The consumers complained that such calls are a "nuisance and an invasion of privacy." ... The purpose and history of the TCPA indicate that Congress was trying to prohibit the use of ATDSs to communicate with others by telephone in a manner that would be an invasion of privacy. We hold that a voice message or a text message are not distinguishable in terms of being an invasion of privacy.⁹

The same analysis applies equally to RVM messages.

- d. The definition of call easily encompasses the pre-recorded RVM voice messages. These RVM messages are meant "to communicate with or try to get into communication with a person by a telephone." Pre-recorded RVM voice messages are only left by accessing the consumer's cellular telephone number, and they are clearly to communicate with the consumer.

If there are any questions, please contact Margot Saunders at the National Consumer Law Center (NCLC), msaunders@nclc.org (202 452 6252, extension 104).

⁷ 569 F.3d 946 (9th Cir. 2009).

⁸ *Id.* at 954 (*citations omitted, emphasis added*).

⁹ *Id.*

This disclosure is made pursuant to 47 C.F.R. § 1.1206.

Thank you very much.

Sincerely,

/s/

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Attachments: 10 pages

cc. Randall Snyder

EXHIBIT A

VoiceMail Comparison

	Basic Voicemail (Included)	iPhone® Visual Voicemail (Included)	VoiceMail to Text for iPhone (\$2.99)	Basic Visual Voicemail (Included)	Premium Visual Voicemail (\$2.99)
Storage Capacity	20 messages	40 messages	40 messages	20 messages	40 messages
Message Duration	3 minutes	3 minutes	3 minutes	3 minutes	5 minutes
VoiceMail to Text ^{1, 3}	--	--	Yes ⁴	--	Yes
Manage Standard Greetings	*86 only	App and *86	App and *86	App and *86	App and *86
Caller Dependent Greetings ²	--	--	--	--	20
Caller Dependent Greeting members per group	--	--	--	--	50
Call Return	--	Yes	Yes	Yes	Yes
Reply by Text Message and Email	--	Yes	Yes	Yes	Yes
Forward by Text Message and Email	--	--	--	--	Yes
Save VoiceMails to Device ⁵	--	--	--	Yes	Yes
Contact List Integration	--	Yes	Yes	Yes	Yes

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[=] Feedback

1. Voicemail to Text: Discreetly read voicemails without listening to them
2. Caller Dependent Greetings: Create personal greetings for a caller or a group of callers
3. Only the first 45 seconds of each voice message will be transcribed
4. Transcribed voicemails will be sent as an SMS
5. Windows Phones that support Visual Voicemail (\$2.99), do not support saving voicemails to the device.

Windows is a registered trademark of Microsoft Corporation in the United States and other countries.

[Get Help at a Store](#)

EXHIBIT B

[About](#)[Mobile App](#)[Create Account](#)[Main](#)[Discover](#)[Pricing](#)[Contact](#)[Platform Login](#)[Add Funds](#)

866.635.6918

Features Showdown

With an All-in-one Platform Loaded with features (New Ones Always in Development), See What Makes Stratics Networks your ONLY Choice!

Platform Features

[Start a Live Call Now!](#)

[About](#)[Mobile App](#)[Create Account](#)[Main](#)[Discover](#)[Pricing](#)[Contact](#)[Platform Login](#)[Add Funds](#)

866.635.6918

Real-Time Reporting

**Time Zone
Protection**

Massive Capacity

Platform Features

Stratics Networks' vs The Competitors

[Start a Live Call Now!](#)



Main

Discover

Pricing

Contact



Platform Login

Add Funds

866.635.6918

Landline/Mobile Separator – Scrub Landlines, Duplicates & Malformed Data

YES

LIMITED

Live Support – 7 Days a Week from 9am ET – 11pm ET

YES

NO

Legal Endorsements – Endorsed by 20 Top Telecom Attorneys

YES

NO

Full White Label – Your Own Logos & URL and Logins

YES

NO

RVM On-Demand – Send Targeted Single Drops

YES

LIMITED

Massive Capacity – Send Out 10,000 RVMs Per Minute

YES

NO

API – Full REST API

YES

LIMITED

All-In-One Platform – Ringless Voicemail, IVR, Polling, Live Transfers, Voice Broadcast

YES

NO

Mobile App – iOS & Android App

YES

NO

List Uploading – Upload Unlimited Lists and List Sizes

YES

NO

Proprietary Delivery – 4 RVM Delivery Methods

YES

NO

True Ringless – ZERO Rings or Line Taps on Advanced Delivery

YES

NO

Full Management – Detailed Management of All Campaign Aspects

YES

NO

Recordings – Successful RVMS are Recorded for You to Listen To

YES

NO

Inbound IVR – Filter the Best Inbound Leads

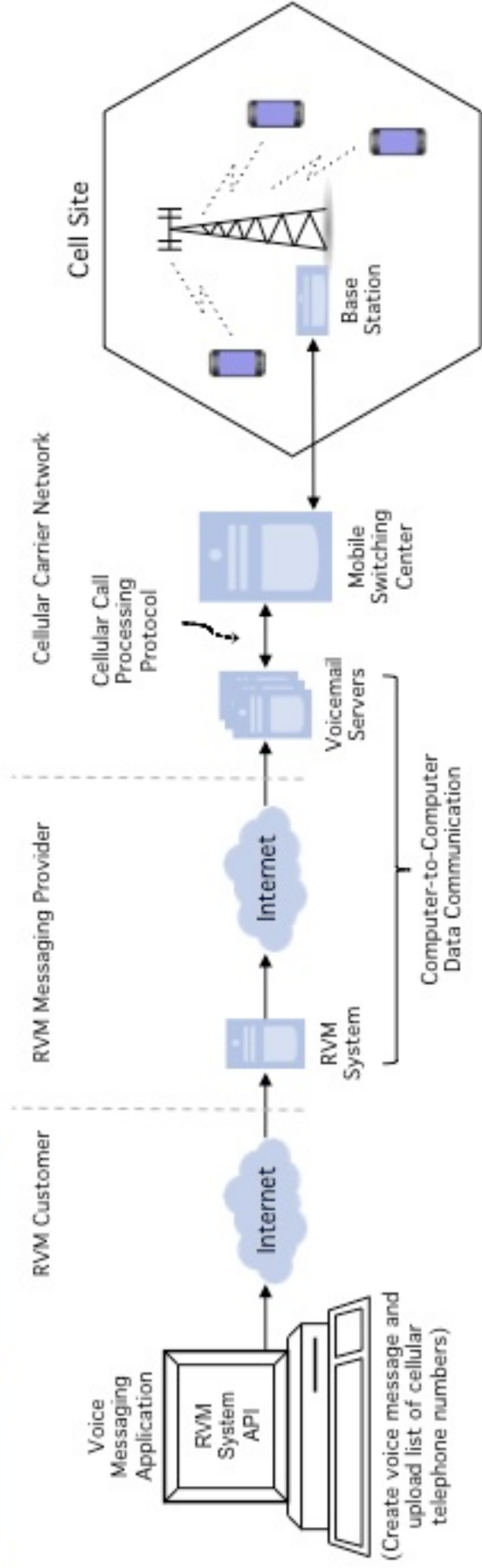
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Platform Features



EXHIBIT C

[RVM Voice Message Call to Subscriber](#)



[Text Message Call to Subscriber](#)

